Civil Misc. App. No.598/1994
Smt.Asha & Ors. ***Versus*** Ashok Kumar & Ors.

Date of Order ::: 12/07/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. Rakesh Bhargava, for appellant (claimant)
Mr. P.K.Kasliwal)
Mr. C.M.Sharma) for respondent

Instant appeal has been filed for enhancement of compensation of Rs.2,53,500/- awarded by Motor Accident Claims Tribunal, Jaipur (District) vide Award dt.22/02/94 in MACT case No.685/91.

Claimants are wife, two minor children & sister and parents of deceased Mukesh Kumar aged 30 years, who died in motor accident on 19/05/89. As alleged in claim petition, deceased was serving in National Engineering Company and having some additional income from watch repairing. As per salary slip, he was drawing salary of Rs.1842/- per month. After taking note of material on record, including the fact to which there was no rebuttal in evidence that deceased was part timely engaged in watch repairing and was earning substantial amount, the learned Tribunal assessed his salary income as Rs.17,300/- and Rs.6,000/- per annum as income from watch repairing and after deduction of Rs.800/- towards his personal expenses, determined Rs.15,900/- as annual loss of income and dependency to the claimants and with the aid of multiplier of 15, awarded total compensation of Rs.2,53,500/- (including Rs.15,000/- to wife & minor children towards love & affection) along with 12% per annum from the date of claim petition. Hence this appeal.

Counsel for appellants submits that even as

per age of deceased who was 30 years, ordinarily multiplier as per amendment of Schedule appended to Motor Vehicle Act in 1994, would have been of 17; and even total compensation towards love & affection including consortium to wife only Rs.15,000/- has been awarded to six claimants which is on lower side; as such computation made for granting just compensation towards loss of income and love & affection, consortium being on lower side and erroneous in law requires enhancement by this Court.

On the other hand, Counsel for respondents supported impugned finding and contends that keeping in view age of claimants and the deceased, what has been finally awarded by Tribunal while adopting multiplier of 15 being just & adequate, requires no enhancement.

I have considered contentions of Counsel for parties and with their assistance, examined material on record. Indisputably, the deceased was 30 years of age at the time of accident on 19/05/89. After taking note of totality of facts brought on record, referred to above, Tribunal rightly assessed annual dependency and financial loss to family as Rs.15,900/- after 1/3rd deduction towards personal expenses. It is true that prior to amendment made in 1994 there was no schedule for adopting multiplier but this is standard formula for computation of just compensation, in my opinion as per Schedule appended to the Act vide amendment in 1994, 17 should have been appropriate multiplier for just compensation. In such circumstances, claimants are entitled for compensation towards dependency to Rs.2,70,300/- (15,900x17) and as regards compensation awarded by

Tribunal to six claimants for a sum of Rs.15,000/- towards love & affection, it is also on lower side and looking to totality of circumstances, on this count, Rs.25,000/- instead of Rs.15,000/- awarded by Tribunal will be an appropriate sum towards consortium to wife, love & affection to minor children.

Consequently, this appeal is allowed and the claimants are entitled for enhanced compensation for a sum of Rs.41,800/- (Rs.2,95,300/- minus Rs.2,53,500/- awarded by Tribunal), which shall also carry interest @ 6% p.a., from the date of filing of claim application till its actual payment. Enhanced compensation with interest shall be deposited by Insurance Company through A/c payee bank draft/pay order before the Tribunal within two months.

The Tribunal is further directed to deposit the enhanced compensation in FDR for three years in Nationalised Bank in the name of claimant Smt.Asha w/o deceased, who will be entitled to receive monthly interest on FDR supra as well as full amount of FDR on its maturity.

It is made clear that premature encashment shall be permitted in respect of fixed deposits, only on an application being made to the Tribunal and on it being satisfied about urgency of any need to old aged parents and absence of financial resources to meet any urgent financial need, Tribunal may permit loan or advance or premature encashment by a reasoned order. To the above extent, impugned Award stands modified. No order as to costs. Record, if received, be returned back forthwith.

(Ajay Rastogi), J.

K.Khatri/598CMA1994